CASE STUDY: RANGE RESOURCES' NEW OWNER POLICY SELF DISCLOSURE

I. Acquisition

In September 2016, Range completed acquisitions of new assets in the Terryville Field of Louisiana, adding more than 220,000 acres to Range's portfolio.

II. Initial Assessment of Acquired Facilities

a. Following Range's acquisition of its newly-acquired assets in northern Louisiana, the Environmental Health & Safety department began assessing compliance with environmental laws and regulations at the facilities.
b. Range brought in outside counsel—Pillsbury Winthrop Shaw Pittman LLP—to help assess compliance and develop a strategy for addressing any noncompliance.
c. Started with evaluating the key regulations potentially applicable:
    i. Which facilities, if any, are major source/Title V sources?
    ii. Which sites are subject to 40 C.F.R. Part 60, Subpart OOOO or OOOOa?
d. Identified highest producing sites, developed emissions factors, performed modeling.
e. Made an accurate well site and equipment inventory, including dates of well drilling and equipment installation.

III. Addressing Noncompliance

a. Based on initial calculations, Range believed that noncompliance at its newly-acquired facilities was fairly widespread, and so it set out to identify specific noncompliance using more accurate information based on actual sampling and modeling (the inherited data and regulatory determinations were unreliable)
b. Range had to decide how to best correct the noncompliance taking into account enforcement exposure and operational needs to continue production.

IV. Weighing Whether to Self-Disclose

a. Range had to decide whether to disclose the violations to the state and/or EPA, or whether to try and correct the violations itself before state or EPA enforcement did. Range concluded that there was a very good chance EPA and/or the state would discover the violations before corrective action at all 390 facilities could be completed.
b. Range decided that the best course was to voluntarily self-disclose the potential noncompliance to the state and, given that the state did not have its own new owner policy or audit policy, and EPA's track record of overfilling when it was not involved. Accordingly, Range committed to conducting an audit of all of the newly-acquired facilities under EPA's New Owner Audit Policy.
c. The New Owner Audit Policy provided flexibility for a company such as Range that acquired facilities to reach an agreement with EPA within nine months from the date of the transaction. It offered substantial penalty mitigation in exchange for any self-disclosed violations.
d. The primary considerations – (1) maintaining control over operations and process while correcting violations and (2) reducing penalty and enforcement exposure.

V. Examples of Challenges and Issues with the Audit Policy

a. Uncertain Application – Application of the New Owner Policy is not automatic just because you bought new facilities; EPA has full discretion whether to apply the Policy. So to ask for New Owner Policy coverage, we first had to describe the nature of the violations we were seeing. This made us nervous and vulnerable to penalties and enforcement action if EPA rejected our request.
b. Default to a Short Corrective Action Window – The default corrective action period is 60 days from the discovery of the violation unless EPA gives you an extension, although it generally won't give one up front; you have to submit a proposed corrective action schedule and pray that they buy it; if they don't, you are once again potentially subject to enforcement. At the same time, EPA's track record is to provide reasonable extensions, but you have to hope that continues. Range was given three years to get six phases of its audit done for all 390 acquired facilities.
c. No Model Agreement – EPA had no model New Owner Audit Agreement, and virtually no precedent. So, we had to craft our own agreement. Moreover, we did it by an exchange of letters, rather than a signed document, which raised some question on whether there was a true agreement just by the exchange of different terms.
d. Audit Agreement Questionnaire – EPA insisted on a form questionnaire that had been developed internally for Audit Policy cases that didn't involve new owners, and really didn't fit our New Owner situation or the provisions of that policy (e.g., the training and education of its numerous consultants, engineers, and regulatory specialists.

VI. Facility Auditing and Corrective Action

a. Range brought in a third-party environmental consultant to assist with ensuring that each well site was properly permitted and that control equipment was installed, designed, and sized appropriately where necessary. The consultants are also conducting regulatory applicability determinations for all of the potentially applicable regulations to oil and gas production.
b. Range is auditing and completing corrective action at hundreds of sites and its taking various parts of each audit separately. After completing each segment/component of the audit, Range submits a report summarizing the audit activities, violations discovered, and corrective action completed to EPA.
c. Range has to also produce semi-annual status updates.
d. Requires careful coordination with the state (the permitting authority), so flexibility for state agency terms should be built into the audit agreement.

VII. Overall Impressions

a. Although Range is still conducting its comprehensive audit, entering into an agreement has already proven a very wise choice. It has reset our relationship with state and federal regulators in a very positive way, and we have successfully managed the compliance and enforcement risks we faced in acquiring the NLA assets.
b. Under the New Owner Policy, any violations originating with the previous owner and discovered and corrected by Range, will typically receive 100% penalty mitigation. This has allowed us to put what would have otherwise been penalty funds into productive investments in emission controls in the field.